

REMARKS

The present application was filed on November 25, 1998 with claims 1-21. Claims 4, 11 and 18 are canceled herein. Claims 1-3, 5-10, 12-17 and 19-21 remain pending. Claims 1, 8 and 15 are the independent claims.

In the non-final Office Action, the Examiner rejected claims 1-4, 6-11, 13-18, 20 and 21 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 5,933,421 (hereinafter "Alamouti"), and rejected claims 5, 12 and 19 under 35 U.S.C. §103(a) as being unpatentable over Alamouti in view of U.S. Patent No. 5,726,978 (hereinafter "Frodigh").

In this response, Applicant traverses the §102(e) and §103(a) rejections, and amends the claims. Applicant respectfully requests reconsideration of the present application in view of the above amendments and the following remarks.

With regard to the §102(e) rejection, Applicant initially notes that MPEP §2131 specifies that a given claim is anticipated "only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference," citing Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Moreover, MPEP §2131 indicates that the cited reference must show the "identical invention . . . in as complete detail as is contained in the . . . claim," citing Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Applicant submits that the Examiner has failed to establish anticipation of at least independent claims 1, 8 and 15, as originally filed, by the Alamouti reference. Each of these claims as originally filed includes a limitation relating to separation of communications on an uplink of a wireless cellular communication system from communications on the downlink using orthogonal frequency division multiplexing (OFDM). Applicant submits that the Alamouti reference relied on by the Examiner in rejecting independent claims 1, 8 and 15 fails to teach or suggest at least this aspect of the originally-claimed invention.

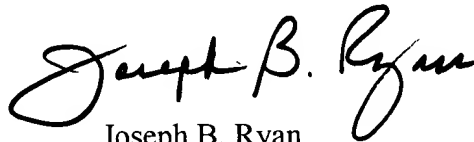
In view of the foregoing, it is believed that claims 1, 8 and 15 as originally filed are not anticipated by the Alamouti reference. The Frodigh reference fails to supplement the fundamental deficiency of Alamouti. The §102(e) and §103(a) rejections are therefore believed to be improper, and should be withdrawn.

Notwithstanding the foregoing traversal, Applicant has amended independent claims 1, 8 and 15, canceled claims 4, 11 and 18, and amended the remaining dependent claims as required to maintain consistency. Support for the amendments can be found in the specification at, for example, page 8, line 26 to page 11, line 5.

Given the traversal, Applicant submits that the amendments made herein are not made for reasons relating to patentability over Alamouti, Frodigh or any other art of record, but are instead made solely in order to expedite the prosecution of the application.

Applicant believes that claims 1-3, 5-10, 12-17 and 19-21 are in condition for allowance, and respectfully requests the withdrawal of the §102(e) and §103(a) rejections.

Respectfully submitted,

A handwritten signature in black ink, reading "Joseph B. Ryan". The signature is fluid and cursive, with the first name "Joseph" and last name "Ryan" clearly legible.

Date: December 8, 2003

Joseph B. Ryan
Attorney for Applicant(s)
Reg. No. 37,922
Ryan, Mason & Lewis, LLP
90 Forest Avenue
Locust Valley, NY 11560
(516) 759-7517